

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

v.

16 CR 521 (CM)
DECLARATION OF COUNSEL

ANDY GYAMFI,

Defendant.

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Karloff Commissiong, an attorney duly admitted to practice law in the United States District Court, Southern and Eastern Districts of New York, declares that the following is true and correct to the best of his knowledge:

1. Donald Yanella and I are counsel for Andy Gyamfi, and this declaration is submitted in support of a motion to suppress cell-site location information (hereinafter “CSLI”) obtained by the Government without a warrant supported by probable cause, in violation of the Fourth Amendment, as well as the fruits of that unlawful search and seizure.
2. Count One of the indictment charges Mr. Gyamfi with conspiracy to commit Hobbs Act robbery on April 28, 2016, in violation of 18 U.S.C. § 1951. Count Two is a substantive count of attempted Hobbs Act robbery on the same date, in violation of 18 U.S.C. § 1951. Count Three charges Mr. Gyamfi with possession, brandishing and discharge of a weapon at a person other than Carlos Vargas on April 28, 2016, during the attempted robbery charged in Count Two, in violation of 18 U.S.C. § 924(c)(1)(A)(i), (ii), (iii), and
2. Count Four charges causing the death of Carlos Vargas with a firearm during the attempted robbery charged in Count Two, in violation of 18 U.S.C. § 924(j)(1) and 2.

3. Dwaine “Twin” Collymore was previously charged with these same crimes in the third superseding indictment, and he pleaded guilty to all four counts on February 20, 2018. Upon information and belief, the Government’s theory is that Dwaine Collymore, not Andy Gyamfi, actually committed the robbery and fired the shots that are the subject of Counts Three and Four of the indictment.
4. Although Mr. Gyamfi is not alleged to have entered the apartment where the attempted robbery occurred on April 28, 2016, the Government seeks to introduce cell site location information showing that Mr. Gyamfi was in the immediate vicinity. The Government also seeks to introduce evidence that Mr. Gyamfi was in contact via cellular telephone with at least one of the coconspirators. The Government collected such evidence by making applications for CSLI on cellular phones that were used by the alleged coconspirators, including Mr. Gyamfi and Mr. Collymore.
5. Attached as Exhibit A is the Government’s “Application for Order Requiring Disclosure of Historical Cell Site Information,” dated June 17, 2016, and a related Order signed by a United States Magistrate Judge the following day. This application was supported only by an application by an Assistant United States Attorney. Although the prosecutor’s statement summarized information about the case provided by a law enforcement officer, it did not include an affidavit from that law enforcement officer. A United States Magistrate Judge granted the application in an “Order for Historical Cell Site Information...”
6. Attached as Exhibit B is the Government’s Application for Warrant and Order for historical and prospective cellphone location information for a cellular phone. The application for the warrant relies on an affidavit, dated July 29, 2016, by Detective

Steven Smith of the New York City Police Department. According to Det. Smith's affidavit, Andy Gyamfi uses a cellular phone assigned phone number (646) 387-6940. A United States Magistrate Judge signed the Warrant and Order on July 29, 2016.

7. Attached as Exhibit C is the Government's Application for Warrant and Order for historical and prospective cellphone location information for a cellular phone used by Mr. Gyamfi. It includes an affidavit, dated August 2, 2016, by Antoinette Guzman, an Investigator for the United State's Attorney's Office for the Southern District of New York. According to Investigator Guzman's affidavit, the cellular phone used by Andy Gyamfi changed phone numbers on or about July 1, 2016. The previous number was (646) 387-6940, but it was assigned phone number (585) 524-6666 on or about July 1, 2016. A United States Magistrate Judge signed the Warrant and Order on August 2, 2016.
8. For the reasons set forth in the attached memorandum of law, Mr. Gyamfi respectfully requests that all historical and prospective cellphone location information be suppressed.

Dated: New York, New York
August 10, 2018

/s/

Donald Yannella, Esq.

/s/

Karloff Commissiong, Esq.